

**Memorandum of Decision: 01-20170087R
Individual Income Tax
For the Year 2011**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Based on information provided by Individual and his employer, Individual established that he was not a resident of Indiana in 2011; Individual provided documents establishing that he lived and worked in Illinois during 2011.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *In the Matter of Evrard*, 333 N.E.2d 765 (Ind. 1975); *Board of Medical Registration and Examination v. Turner*, 168 N.E.2d 193 (Ind. 1960); *Croop v. Walton*, 157 N.E. 275 (Ind. 1927); *Culbertson v. Bd. Of Comm'rs of Floyd County*, 52 Ind. 361 (1876); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); [45 IAC 3.1-1-22](#).

Taxpayer argues that he was not an Indiana resident during 2011 and that the Department's previous decision to the contrary was erroneous.

STATEMENT OF FACTS

The Indiana Department of Revenue ("Department") determined that Taxpayer was a full-year resident of Indiana during 2011. The Department took steps to collect 2011 income taxes it assessed Taxpayer. The Department issued a collection warrant and forwarded the matter to the Department's collection agency.

In response to the Department's collection efforts, Taxpayer filed a 2011 Indiana income tax return which, Taxpayer explains, was filed "in haste." Taxpayer paid approximately \$1,900 due on that return. Taxpayer stated that he subsequently verified that the 2011 return had been received. Taxpayer stated that he was then informed that he was also required to file a 2010 Indiana income tax return. In response, Taxpayer filed a 2010 "Indiana Amended Individual Income Tax Return" (IT-40X).

Taxpayer thereafter filed a 2011 "Indiana Amended Individual Income Tax Return" (IT-40X) requesting a refund of approximately \$1,400. Accompanying the 2011 amended return, Taxpayer submitted various documents in support of Taxpayer's contention that he was not a resident of Indiana during 2011.

The Department responded in writing that it was "unable to move forward . . ." because a "1099-MISC (Nonemployee Compensation) was issued [Taxpayer] in 2011 listing the payee State of Indiana." The Department requested documentation from Taxpayer's employer "specifying if the work was completed in Indiana."

Taxpayer submitted a protest challenging the Department's decision that he was a resident of Indiana during 2011 and was not entitled to the \$1,400 refund. An administrative hearing was conducted during which Taxpayer explained the basis for his protest. This Memorandum of Decision results.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayer established that he was not a full-year resident of Indiana during 2011 and is therefore entitled to a refund of the Indiana income taxes paid that year.

In any protest, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person . . ." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . ." IC § 6-3-1-12.

To establish a new domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* at 1317 (internal citations omitted).

The supreme court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. *Id.* Facts to be considered include:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. *Id.*

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. *Croop*, 157 N.E. at 278-79. Finally, courts have considered the

location of taxpayer's household goods and mailing address. *Board of Medical Registration and Examination v. Turner*, 168 N.E.2d 193, 197 (Ind. 1960); *See also, Culbertson v. Bd. Of Comm'rs of Floyd County*, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." *Croop*, 157 N.E. at 276.

Taxpayer has provided various documents in support of his argument that he was not a full-time resident of Indiana during 2011. Included among those documents are:

- 2011 bank statements listing Taxpayer's Illinois address;
- Bank notice acknowledging a change of address (Illinois to Illinois) dated October 2010;
- 2011 utility statements listing Taxpayer's Illinois address;
- Lease agreement dated January 3, 2010, listing Taxpayer's Illinois address;
- 2011 Illinois income tax return listing Taxpayer's Illinois address;
- "Personal Car Policy Declaration" (insurance policy) listing Taxpayer's Illinois address;
- "Insurance License" issued by the state of Illinois, allowing Taxpayer "to do business in the state of Illinois . . . , " and listing Taxpayer's Illinois address;
- An auto loan "contract pay off" notice acknowledging "final payment on your contract" and listing Taxpayer's Illinois address.

In addition, Taxpayer addressed the Department's concern that he had received a 1099-MISC (Nonemployee Compensation) listing Taxpayer as having an Indiana address. Taxpayer forwarded a letter from the Illinois employer which issued Taxpayer the 1099-MISC form. The employer acknowledged that it employed Taxpayer during 2011 but that the Indiana "address that was listed on his 1099 for tax year 2011 had not been updated to reflect his correct address." The employer went on to state that "[a]t no point in tax year 2011, did [Taxpayer] work in the state of Indiana" and that Taxpayer's "residence address, and employment address were both in Illinois."

Based on the documentary evidence provided by Taxpayer - and his employer - there is insufficient evidence to conclude that Taxpayer "was domiciled in this state during the taxable year[s]," "maintain[ed] a permanent place of residence in this state" or spent "more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12. Taxpayer is entitled to the requested refund of 2011 Indiana income tax.

Taxpayer has not raised questions concerning collection fees, penalties, or interest charges associated with the Department's 2011 assessment. This Memorandum of Decision determines only that Taxpayer is entitled to a refund of the *tax* portion of that assessment.

FINDING

To the extent outlined in this Memorandum of Decision, Taxpayer's protest is sustained.

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